

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.APPL.(C) 8/2010 IN CO.PET. 191/1997**

% Date of Decision: 1st February, 2011

! **M/S CRB CAPITAL MARKETS LTD.** Petitioner
Through: Mr. Bhuvan Gugnani, Advocate

versus

\$ **MR. ROBIN BANERJEE** ...Respondent
^ Through: Mr. Vinay Sharma, Adv. for respondent
Mr. Rajiv Bahl, Adv. for OL
Ms. Manisha Singh & Ms. Swati Setia,
Advs. for RBI

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment? (No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J(ORAL)

Today learned counsel for the respondent has submitted that he has not been able to contact his client to seek instructions for exploring the possibility of settlement as was volunteered by him on 13th September, 2010 and further that in view of the fact that his client is no more in touch with him and has not even bothered to respond to his

various letters requiring him to contact him for prosecution of present claim filed by the Official Liquidator against him he may be discharged from this matter as respondent's counsel. He has submitted that in this regard he has already moved separate application also, being CO.APPL. No.148/2011. He has also submitted that in these circumstances this Court may proceed with the OLs petition which was filed against the respondent for recovery of some money allegedly due from him and to pass any appropriate orders which this Court may deem appropriate.

2. Accordingly I have heard the learned counsel for the Official Liquidator on CO.APPL. (C) 8/2010 filed in CO.PET. 191/1997.

3. In the proceedings in respect of Company Petition No. 191/1997 instituted against M/s CRB Capital Markets Limited for its winding up at the instance of Reserve Bank of India an order was passed by this Court appointing provisional Official Liquidator on 22nd May, 1997.

4. During the pendency of the proceedings in the aforesaid main petition the ex-Management of the Company under liquidation came out with some scheme for its revival which was accepted by the Company Court but that acceptance was challenged by the Reserve Bank of India before a Division Bench and implementation of that scheme was stated to have been stayed by the Division Bench.

5. The Official Liquidator filed the present petition under Section 446 (2) of the Companies Act for recovery of ₹ 11,23,000/- with interest thereon at the rate of 18% per annum from 1st April, 1997 till its realization in full against the respondent who was appointed as a Director in the Company under liquidation. The respondent was appointed as a Senior Vice President (Securities) in the Company under liquidation sometime in July, 1995. As per the averments made in the petition of the Official Liquidator there was an amount of ₹ 11,23,000/- due from the respondent on account of the loan/advances taken by him together with interest and costs. A statement of account in respect of that loan account was annexed with the petition which shows that a sum of ₹ 9,75,000/- was outstanding in the account of the respondent as on 31st March, 1997. Since the respondent had not liquidated his aforesaid liability towards the Company under liquidation demand notices were served upon him but he failed to respond to them and consequently the Official Liquidator after taking over the charge of the Company under liquidation filed this petition.

6. Notice of this petition was sent to the respondent who entered appearance through his counsel and had sought time to file reply to the same. However, no reply was filed by him despite sufficient number of opportunities having been given to him. Finally on 24th October, 2005 a

request made on his behalf for more time for filing of the reply was declined. Thereafter the petitioner (the Official Liquidator) was called upon to file affidavit by way of evidence. Affidavit dated 4th January, 2006 of Smt. Richa Kukreja, Deputy Official Liquidator was filed in which she had claimed that as per the list of staff loans furnished by the ex-Management of the Company under liquidation a sum of ₹ 9,45,000/- was due and payable by the respondent as on 31st March, 1997 and further that upon scrutiny of the records of the Company it was found that the respondent after resigning from the Company had entered into an agreement on 11th March, 2000 (it is stated that it is a typographical mistake and it should be 11th March, 1996) whereunder he had accepted his liability as also the fact that he had paid to the Company a sum of ₹ 2,25,000/- and had agreed to pay the remaining amount of ₹ 9,75,000/- and had also issued a post dated cheque dated 30th April, 1996 for a sum of ₹ 9,75,000/- and had further agreed to pay interest thereon at the rate of 4% in case of non-payment of the loan amount in time. That cheque of 30th April, 1996 when presented to the respondent's bank was dishonoured which led to the filing of the criminal complaint against him under Section 138 of the Negotiable Instrument Act.

7. Since the respondent has failed to refute the claim of the Official Liquidator made in the present petition by not filing any reply thereto the averments made in the petition stand admitted by him. The affidavit of the Deputy Official Liquidator Smt. Richa Kukreja has also remained unchallenged.

8. I am, therefore, of the view that it stands proved by the Official Liquidator that a sum of ₹ 12 lacs was advanced to the respondent as a staff loan out of which a sum of ₹ 2,25,000/- was repaid by him to the Company and a sum of ₹ 9,75,000/- remained unpaid. Therefore, the respondent has become liable to suffer a decree for the aforesaid amount being the principal outstanding loan amount.

9. As far as the claim of interest, which amount appears to be included in the claim of ₹ 11,23,000/- is concerned, the petition is silent in respect of any agreement between the Company and the respondent. No loan agreement has been placed on record which might have shown the rate of interest which the respondent had agreed to pay. Learned counsel for the Official Liquidator submitted that interest was being claimed at the rate of 18% per annum from 1st April, 1997 onwards. However, there being no basis for claiming interest at such a rate the same cannot be awarded. Learned counsel for the Official Liquidator

had also submitted that the respondent had after resigning entered into an agreement with the Company, copy of which had been annexed with the affidavit of the Deputy Official Liquidator by way of evidence, which shows that the respondent had agreed to pay interest at the rate of 24% per annum in case of failure to clear the outstanding dues for which amount he had issued a post dated cheque. However, I am of the view that the said agreement cannot be made the basis for awarding interest at the rate being claimed since no such agreement was pleaded in the claim petition.

10. This petition is accordingly disposed of by passing a decree against the respondent for a sum of ₹ 9,75,000/- with interest thereon at the rate of 10% per annum from 1st April, 1997 till its realization in full. There being no material placed on record by the Official Liquidator as to the administrative expenses allegedly incurred its claim on that count @ 1% is rejected.

P.K. BHASIN,J

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